

1 Regional Sports Network. So, in one market,  
 2 in Harrisburg, all of those subscribers get  
 3 CSN Philly, and everywhere else they get a CSN  
 4 MA, and it is that unfair competition, and  
 5 that discrimination on the basis of  
 6 affiliation that underlies the complaint that  
 7 MASN has brought to obtain the launch and  
 8 coverage for all the rest of those  
 9 subscribers, those [REDACTED] subscribers. And  
 10 they are predominantly in Harrisburg, Roanoke-  
 11 Lynchburg, the Tri-Cities, but they are also  
 12 scattered throughout other parts of Virginia.  
 13 And, as Mr. Cuddihy testified, some as close  
 14 as 60 miles to Washington, D.C., and  
 15 Baltimore, Maryland.

16 MR. KIRK: There's nothing in the  
 17 agreement, Your Honor, about these upgrades  
 18 that counsel is referring to. And, in fact,  
 19 Mr. Cuddihy previously testified that there's  
 20 a hunting license. If they believed that some  
 21 systems have been upgraded, they could go to  
 22 those systems and say okay, we think there's

1 demand. We think you have bandwidth, you  
2 should launch. Mr. Cuddihy has also testified  
3 that he has no knowledge of whether that was  
4 ever done.

5 JUDGE SIPPEL: Well, I'm not  
6 expecting -- what I'm asking is going beyond  
7 I think what this witness has shown himself to  
8 be having the capacity to testify to. And I  
9 think these are numbers of numbers. Right?  
10 Somebody is going to have to define the  
11 numbers. You told me that, Mr. Singer or  
12 somebody will do it. What I'm saying is, I'm  
13 just trying to think of a pragmatic way of  
14 approaching this. Do I have to worry about  
15 the people in places like the Tristate area,  
16 or Roanoke, or am I only concerned, for  
17 purposes of this case, with the [REDACTED] in  
18 Harrisburg?

19 MR. FREDERICK: No, you --  
20 respectfully, Your Honor.

21 JUDGE SIPPEL: Yes, please.

22 MR. FREDERICK: We urge you to

1 care about all [REDACTED], because the contract  
2 says, as it is worded, at Comcast's discretion  
3 those other systems.

4 JUDGE SIPPEL: Yes.

5 MR. FREDERICK: And our submission  
6 is they cannot exercise their discretion in  
7 violation of Federal Anti-Discrimination Law.  
8 When we went to them later in 2007, and said  
9 please carry us, they said no, and they made  
10 up a bunch of reasons that they had never used  
11 before when they left these systems off the  
12 list without telling us.

13 JUDGE SIPPEL: Okay. That's -

14 MR. FREDERICK: And, so, our  
15 submission is, the contract is the contract.  
16 But after the contract is entered into, and we  
17 went to them, they discriminated against MASN  
18 in saying no. That is the core of our case.

19 MR. KIRK: But, Your Honor -

20 JUDGE SIPPEL: But you did sign a  
21 contract that says that Comcast has  
22 discretion. And there is -- do you have any

1     doubt that there is this element of a hunting  
2     license that comes out of this?

3                   MR. FREDERICK:  No.  The words  
4     "hunting license" do not appear in the  
5     contract.

6                   JUDGE SIPPEL:  I understand that.  
7     No, I understand that.  But, apparently, the  
8     concept of a hunting license seems to have  
9     been, at least, permeating this thing.

10                  MR. FREDERICK:  Your Honor, their  
11     concept of a hunting license is that the deer  
12     has already been shot because it's in  
13     Comcast's carcass, and we don't even get any  
14     bullets in the gun for the hunting license.  
15     And that's why the discrimination here is at  
16     the core of this, because our very same  
17     program was carried when it was on CSNMA.  And  
18     now that we're not on CSNMA, and we're on  
19     MASN, they say there's no interest in it.  And  
20     that's inherently discriminatory.

21                  JUDGE SIPPEL:  Well, okay.  We're  
22     going back to the opening statements, and I

1 didn't want to carry it that far.

2 MR. KIRK: The other thing you  
3 need to focus on, Your Honor, is we talked  
4 about [REDACTED] subscribers, and there's no  
5 press in the room. It's approximately [REDACTED]  
6 [REDACTED] of the subscribe base, but the fact,  
7 when we're talking about Harrisburg, and  
8 Roanoke-Lynchburg is the revenue under the  
9 agreement, because these are fringe areas,  
10 that is being left out, or allegedly, MASN  
11 can't get, is approximately [REDACTED].

12 JUDGE SIPPEL: Okay. I mean, I  
13 tried to narrow it a little bit, but I've been  
14 too successful.

15 MR. FREDERICK: Your Honor, and I  
16 just would like to ask that you strike Mr.  
17 Kirk's testimony about the percent of revenue,  
18 because there will be people talking about  
19 revenue.

20 JUDGE SIPPEL: Well, I -

21 (Simultaneous speech.)

22 MR. FREDERICK: No, I mean, it's -

1 JUDGE SIPPEL: I'm not going to -  
2 wait a minute. Wait a minute. Look, this is  
3 an advocate who is presenting something, and  
4 I'm asking questions, and he's trying to help  
5 me. That's really all this is. I don't think  
6 that Mr. Kirk is going to be cited, and fined.

7 MR. FREDERICK: I understand, Your  
8 Honor.

9 JUDGE SIPPEL: You'll have some --  
10 I know you'll have your -

11 MR. FREDERICK: There is  
12 significant spillover that affects -- when  
13 he's talking about one facet of the revenue,  
14 there are other effects to revenue that will  
15 be testified on by Dr. Singer in his economic  
16 analysis.

17 JUDGE SIPPEL: Okay.

18 MR. FREDERICK: That's all I  
19 wanted to say.

20 JUDGE SIPPEL: I know that there  
21 will. And even if there's an imaginary jury  
22 here, I will instruct the jury accordingly.

1                   MR. SCHONMAN: Your Honor, I just  
2   have a few more questions.

3                   JUDGE SIPPEL: Go ahead, sir.

4                   BY MR. SCHONMAN:

5           Q       Mr. Cuddihy, Mr. Kirk went through  
6   a long list of other cable carriers in each of  
7   the disputed communities that do not carry  
8   MASN programming. Do you recall that?

9           A       I do.

10          Q       As to those cable carriers, those  
11   cable systems that don't carry MASN  
12   programming in those communities, did MASN  
13   approach them, any of them, and ask them to  
14   carry MASN programming?

15          A       Absolutely. We approach almost  
16   all MVPDs and try to solicit them so they  
17   would carry MASN. In fact, in Roanoke-  
18   Lynchburg two weeks ago a new system called  
19   Giles-Craig just signed us up in that area  
20   because of the baseball product. So, in that  
21   same area where Comcast has refused to carry  
22   us, a new operator has just come on board.

1           Q       Very good. As to the ones that  
2 are not carrying -

3                   JUDGE SIPPEL: Where is that? I'm  
4 sorry.

5                   THE WITNESS: It's in the Roanoke-  
6 Lynchburg area.

7                   JUDGE SIPPEL: Giles, it's called?

8                   THE WITNESS: Giles, G-I-L-E-S.  
9 Craig, C-R-A-I-G. I think that's the way it's  
10 spelled. They just launched us on expanded  
11 basic, same terms that Comcast pays, and  
12 DirectTV pays, and Cox, and Dish, same terms  
13 and cost as everybody else.

14                  JUDGE SIPPEL: And in the Roanoke  
15 area, is that?

16                  THE WITNESS: It's in the Roanoke-  
17 Lynchburg DMA. Might be the official town,  
18 city might be Pembroke, P-E-M-B-R-O-K-E. It  
19 just happened a couple of weeks ago.

20                  JUDGE SIPPEL: Thank you.

21                  THE WITNESS: You're welcome.

22                  BY MR. SCHONMAN:



1 Q To your knowledge, MASN approached  
2 all the other cable companies. Correct?

3 A Sure. I mean, some of the little  
4 mom and pops, they don't answer the phone. We  
5 don't get in touch with, some with a couple of  
6 hundred subscribers. But definitely the big  
7 ones, the ones over 1,000 subs, we've  
8 approached all those.

9 Q As to the ones you've been able to  
10 speak with, who actually answered the phone  
11 and engaged in conversation with you, have  
12 they given you any reasons why they wish not  
13 to carry MASN programming?

14 A Sure.

15 Q What are the reasons they've given  
16 you?

17 A They give some reasons, they don't  
18 have the bandwidth.

19 Q I'm sorry?

20 A They don't have the bandwidth, is  
21 one of the reasons. The cost is too high, is  
22 another reason. And there's no fan interest.

1 Those are usually the three reasons we get.  
 2 I can't think of any others, we don't get. I  
 3 expect we're going to be carried on many of  
 4 those systems and sign them up in due time,  
 5 but usually, when we sign up the major  
 6 operator in that area, the smaller ones  
 7 usually follow. That's my experience from  
 8 talking to consultants and other people, and  
 9 just being in the business, that you sign up  
 10 the big dog, and the rest usually follow.

11 Q So, why do you think these other  
 12 smaller one are going to follow, after having  
 13 spoken with them, and you seek reasons why  
 14 don't they want to carry?

15 A Well, in due time maybe their  
 16 constraints lessen, maybe they're able to  
 17 better afford the system, maybe they discover,  
 18 like Giles-Craig did, that there is actually  
 19 true fan affinity in those areas. Don't  
 20 forget, we have -- in Harrisburg, there are  
 21 six operators that carry us. There are six  
 22 operators who don't. And the three biggest

1 ones, Dish, Direct, biggest names, Verizon,  
2 all carry us. Comcast carries us in the  
3 Harrisburg DMA, in a portion of the Harrisburg  
4 DMA. They don't carry us in the majority of  
5 the Harrisburg DMA.

6 Q Do you know why?

7 A Sir, I think they're unhappy that  
8 they did not get the rights to the Orioles,  
9 retain the rights to the Orioles, and they do  
10 not have -- rigorously bidding, did not get  
11 the rights to the Washington Nationals.

12 Q That's your guess, belief?

13 A Sir, I don't sit in meetings with  
14 Comcast and figure out why they didn't do  
15 something, or they did. But, to me, we are  
16 not being treated fairly. They want to  
17 protect their own RSN, and they did get the  
18 rights that they sought. They wanted to keep  
19 those rights for themselves. And if they had  
20 kept those rights for themselves, I deny  
21 anybody from Comcast - remember, I worked  
22 there eight years, and they were great to me,

1 and I loved working for them - but, if Comcast  
2 Sports Net Mid-Atlantic was able to retain  
3 rights to the Orioles, or get the rights to  
4 the Nationals, I'm pretty certain that those  
5 games would be distributed on CSNMA, and every  
6 system that Comcast owns or controls in the  
7 Home Team Television territory. Because, they  
8 didn't -- I'll stop there.

9 Q You don't have to stop. Are you  
10 sure you're done?

11 MR. FREDERICK: It's after 5:30,  
12 Judge wanted to leave.

13 JUDGE SIPPEL: Don't let that stop  
14 you.

15 MR. SCHONMAN: I'm done, too.

16 MR. FREDERICK: Your Honor, would  
17 you entertain just a few questions on  
18 redirect?

19 JUDGE SIPPEL: Absolutely. Yes,  
20 sir.

21 MR. FREDERICK: Yes, before we  
22 close the day.

1 JUDGE SIPPEL: Go right ahead.

2 MR. FREDERICK: If I could just  
3 get a clear line of sight.

4 REDIRECT EXAMINATION

5 BY MR. FREDERICK:

6 Q Do you recall earlier you  
7 testified about Atlantic Coast Conference  
8 Basketball games, Mr. Cuddihy?

9 A Yes, sir.

10 Q When you were at CSNMA, did anyone  
11 regard those ACC basketball games as important  
12 for carriers decisions of CSNMA in Southwest  
13 Virginia?

14 A No, not at all. That never came  
15 up.

16 Q Okay. And, I believe you talked  
17 about Boston Red Socks -

18 MR. KIRK: Objection, Your Honor.  
19 He hasn't testified that when he was with CSN  
20 Mid-Atlantic, that he was involved in  
21 affiliate sales, at all. So, there's no  
22 foundation for what he just indicated.

1 BY MR. FREDERICK:

2 Q Did you not speak to Mr. Ortman on  
3 a regular basis when you worked at CSNMA?

4 JUDGE SIPPEL: Go ahead. Can you  
5 answer that -- ask him the question -

6 THE WITNESS: Did I speak to Mr.  
7 Ortman on a regular basis when I worked at  
8 CSNMA?

9 MR. FREDERICK: Yes.

10 THE WITNESS: Yes, I did.

11 BY MR. FREDERICK:

12 Q And did you speak to other people  
13 that were involved in cable distribution in  
14 Southwest Virginia?

15 A Oh, sure. Well, I spoke to our  
16 affiliate relations person.

17 Q And did the affiliate relations  
18 person have experience with other cable and  
19 satellite distributors in Southwest Virginia?

20 A Much.

21 Q Okay. I think that's the basis  
22 for the foundation for your testimony about

1 ACC basketball being important for carriage.

2 Would you agree?

3 A Yes.

4 JUDGE SIPPEL: Well, you can make  
5 that argument.

6 BY MR. FREDERICK:

7 Q I believe you also testified about  
8 Boston Red Socks, and New York Yankees' games  
9 in July of 2004. Do you recall that  
10 testimony?

11 A I do recall.

12 Q Do you know roughly how many games  
13 each season the Orioles play the Yankees and  
14 the Red Socks?

15 A I believe they play the Red Socks  
16 18 times, and the Yankees 18 times.

17 Q So, for a total of 36 games?

18 A That's correct.

19 Q So, having six in one month of  
20 both teams is not so unusual for a six-month  
21 season.

22 A No, because -- no, it's not

1 unusual.

2 Q And are there other teams in Major  
3 League Baseball that are attractive for fans  
4 to watch?

5 A Sure.

6 Q When they play the Orioles?

7 A Absolutely.

8 Q Can you name some of those teams,  
9 please, for the record?

10 A Teams that are attractive to  
11 watch?

12 Q Yes.

13 A The New York Yankees, the Boston  
14 Red Socks, the Philadelphia Phillies, the New  
15 York Mets.

16 JUDGE SIPPEL: Those are -

17 THE WITNESS: We have two teams,  
18 Judge.

19 JUDGE SIPPEL: What is that?

20 THE WITNESS: We have the Orioles  
21 and the Nationals. We have an American League  
22 Team, and a National -



1 JUDGE SIPPEL: No, I'm saying yes,  
2 but they're in league games. I mean, they  
3 don't play the regulars, the Mets don't play -  
4 - oh, I'm -- you mean, the Mets playing the  
5 Nationals.

6 THE WITNESS: Correct. Yes.

7 JUDGE SIPPEL: Okay. I'm sorry.  
8 I was -- go ahead. I'll zip it. Go ahead.

9 (Laughter.)

10 (Off record comments.)

11 MR. FREDERICK: I won't keep you  
12 much longer.

13 BY MR. FREDERICK:

14 Q Would you look again at Comcast  
15 Exhibit 91, and Comcast Exhibit 5.

16 A Which ones are they, again?

17 Q Number 91 was the Affiliate Term  
18 Sheet for MASN -- that was number 5. And  
19 number 91 was the MASN internal Regional  
20 Sports Network analysis.

21 A Okay. I have the Affiliate term  
22 sheet in front of me.

1 Q Okay. Can you turn it to Schedule  
2 A, please?

3 A Yes.

4 Q And just keep that sheet open.  
5 And then if you could also get Comcast Exhibit  
6 91.

7 JUDGE SIPPEL: That's the MASN  
8 list.

9 THE WITNESS: Oh, the MASN list.  
10 Oh. Okay. Yes, I have that, too.

11 BY MR. FREDERICK:

12 Q On the Exhibit 91, the Comcast  
13 list of systems.

14 A Yes.

15 Q Are the Tri-Cities systems listed  
16 on that list for Comcast, on page 91-3?

17 A I do not see Tri-Cities on that  
18 list.

19 Q Are the Roanoke-Lynchburg systems  
20 on that list?

21 A I do not see those on this list,  
22 no.

1           Q       So, if you look at Schedule A,  
2       there are numerous Comcast systems that are  
3       listed on Schedule A, are there not, that are  
4       not on this internal MASN list?

5           A       Correct.

6           Q       Now, some of those would be  
7       Adelphia systems, presumably. Is there a  
8       perfect match in the Adelphia systems that are  
9       listed on page 91-2 with those that are on  
10      Schedule A?

11          A       A perfect match. The Adelphia  
12      systems listed on the MASN list.

13          Q       That's right. I mean -

14                 JUDGE SIPPEL: Are they identified  
15      in Schedule A as the Adelphia -

16                 MR. KIRK: Your Honor, I'm going  
17      to object, because the parties have indicated,  
18      and I believe there's been testimony that not  
19      all Adelphia systems were included in Schedule  
20      A. And, in fact, the parties excluded a  
21      number of former Adelphia, so I'm not sure  
22      what the relevance is of the question.

1 MR. FREDERICK: Here's the  
2 relevance.

3 BY MR. FREDERICK:

4 Q Mr. Cuddihy, if somebody had this  
5 CSN document, number 91, and Schedule A, would  
6 you have been able to identify what was on,  
7 and what was off, and what should be included  
8 or not?

9 A No. You can't go off this MASN  
10 list. You can't.

11 Q Now, you got asked about a number  
12 of very small systems in Tri-Cities, and you  
13 used the words "mom and pop."

14 A Yes, sir.

15 Q Can you just identify for the  
16 record what you meant by mom and pop cable?

17 A Sure. Mom and pop cable, I  
18 alluded to it when you say sometimes you call  
19 the cable system, and you might not get a call  
20 back, and they might not answer.

21 JUDGE SIPPEL: They're always  
22 going to be mom and pops, if that's the way

1 they -

2 THE WITNESS: Yes. And they're  
3 very small systems. Some have 50 subscribers,  
4 some have 100, some have 150, very low  
5 penetrated systems. Sometimes they're just in  
6 development. Okay? Sometimes they're a golf  
7 course community, or a vacation community,  
8 somebody might have the rights to bring  
9 television into that community. And that's  
10 what I referred to by mom and pops.

11 BY MR. FREDERICK:

12 Q So, is it fair to say that a large  
13 number of these small systems that MASN has  
14 not signed up, are these mom and pop  
15 operations?

16 A Yes, that is fair to say.  
17 Absolutely.

18 Q And do you have an estimate of how  
19 many of those mom and pop systems have fewer  
20 than 1,000 subscribers?

21 A I believe that ballpark numbers we  
22 have 45 operators that don't carry us, and 22

1 of them have less than 1,500 subscribers.

2 Those are my ballpark estimates.

3 Q And do you know, roughly, how many  
4 subscribers Comcast has in Roanoke-Lynchburg  
5 DMA?

6 A I don't know off the top of my  
7 head.

8 MR. FREDERICK: Okay. Thank you.  
9 Nothing further.

10 JUDGE SIPPEL: Anything? Well,  
11 let's just see. Do you have anything further  
12 on that line?

13 MR. SCHONMAN: No, sir.

14 JUDGE SIPPEL: Mr. Kirk?

15 RECROSS EXAMINATION

16 BY MR. KIRK:

17 Q Mr. Cuddihy, and this will be very  
18 quick, if you looked at the MASN list, Exhibit  
19 91, and looked at Schedule A.

20 A Yes, sir.

21 Q Would you have been able to  
22 determine that Harrisburg was not on Schedule

1 A?

2 JUDGE SIPPEL: Take your time.

3 THE WITNESS: Harrisburg is on the  
4 MASN list.

5 BY MR. KIRK:

6 Q Correct.

7 A Okay. Harrisburg, virtually  
8 Carlisle, it reads.

9 Q And based on that entry, and the  
10 number of subscribers, when you looked at  
11 Schedule A, would it have triggered a question  
12 for you as to whether or not Harrisburg was  
13 covered?

14 A I would have looked at the areas,  
15 like York, York County, Adams County,  
16 Carlisle, Lancaster, because they're right  
17 around the Harrisburg area. And, again, these  
18 are defined as systems, okay.

19 JUDGE SIPPEL: Which list are you  
20 looking at?

21 THE WITNESS: I'm looking at the  
22 Schedule A.

1 JUDGE SIPPEL: Schedule A.

2 THE WITNESS: There's a word  
3 there, "system". Okay? I went through this  
4 before, but I can't tell you if these systems  
5 do or do not feed the Harrisburg area. I  
6 can't tell you that from this list.

7 JUDGE SIPPEL: Yes, but he's not  
8 asking that question. Mr. Kirk was asking  
9 you, go to MASN's list. MASN's list you're  
10 able to find Harrisburg, and surrounding areas  
11 on that list. And the question is a simple  
12 one, that is, if you had the two lists -- if  
13 you were responsible for being participating  
14 in the negotiation in some way, and you had  
15 the two lists there, before you signed off on  
16 the affiliation agreement, would this prompt  
17 you, would this trigger a question in your  
18 mind and say hey, I think maybe they left  
19 something off this one, Schedule A.

20 THE WITNESS: If I had enough time  
21 and was more experienced, like our  
22 consultants, it's hard for me to say. It's a



1 hypothetical. I would have gone through this  
2 and added up numbers and see if it jelled. I  
3 can't sit here and say that.

4 JUDGE SIPPEL: All right.

5 THE WITNESS: I wasn't there.

6 JUDGE SIPPEL: I think -

7 THE WITNESS: I didn't do it.

8 JUDGE SIPPEL: Okay. That's as  
9 good as you're going to get.

10 MR. KIRK: Two further questions.

11 BY MR. KIRK:

12 Q And that is, you previously  
13 testified this morning that any RSN worth  
14 their salt would have gone into negotiations  
15 with a list of cable systems. Correct?

16 A I did.

17 Q Would that MASN list have formed  
18 the basis for negotiations?

19 A No. This MASN list was something  
20 I believe I did, even before I was a paid  
21 consultant. And I wouldn't go off this list  
22 in any way. I would only go off what the